

1931

RAMANLAL  
SHANTILAL  
& Co.v.  
CHIMANLAL  
DAMODARDAS*Beaumont C. J.*

I do not think Rs. 5,000 was an unreasonable amount. The appeal must, therefore, be dismissed with costs. Notice of motion for stay is also dismissed with costs. Time to bring in the deposit is extended by fourteen days from to-day.

RANGNEKAR, J. :—I agree.

Attorneys for appellants : Messrs. *Khandwala & Chotalal*.

Attorneys for respondents : Messrs. *Natvarlal & Co.*

*Appeal dismissed.*

B. K. D.

## ORIGINAL CIVIL.

### FULL BENCH.

*Before Sir John Beaumont, Chief Justice, Mr. Justice Rangnekar and  
Mr. Justice Nanavati.*

YESHWANT KASHINATH PADWAL (ORIGINAL DEFENDANT No. 2), APPELLANT-  
APPLICANT v. GENAJEE VENAJEE & Co. AND OTHERS (ORIGINAL PLAINTIFFS  
AND DEFENDANTS NOS. 1 AND 3), RESPONDENTS.\*

*Practice—Costs—Application under Order XLI, rule 5 of Civil Procedure Code  
(Act V of 1908), for stay of execution pending appeal.*

In the absence of special circumstances, the general rule as regards the costs of an application for stay of execution pending an appeal, should be that such costs be costs in the appeal.

MOTION for stay of execution pending appeal.

On June 25, 1931, Kania J. passed a decree by which *inter alia*, the appellant and respondent No. 3 (who were defendants Nos. 2 and 3 in the suit) were ordered to pay to the plaintiffs a sum of Rs. 4,315-1-0, and the general costs of the suit and of the trial of issues Nos. 2 to 8. The appellant filed an appeal against that decree on August 5, 1931. The decree-holders in execution of that decree obtained, on August 10, an order by which a charge was created in favour of the plaintiffs on the judgment-debtors' half share in the business of a printing press which they were carrying on in

\*O. C. J. Appeal No. 35 of 1931; Suit No. 1629 of 1929.

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partnership with other persons ; and the Court receiver was appointed receiver of the said share but he was directed not to sell the said interest for a period of two months from the date of the order. That period expired and as the judgment-debtors had failed to satisfy the decree in full, the decree-holders threatened to move the receiver to sell the judgment-debtors' interest in the said business. On October 9, 1931, the appellant applied to the Appeal Court for stay of execution pending the hearing and final disposal of the appeal and for an order restraining the decree-holder from selling his interest in the said business through the receiver.

*M. C. Setalvad*, for the applicant.

*C. K. Daphtary*, for the respondents.

BEAUMONT, C. J. :—This is an application for stay of execution on a judgment pronounced by Mr. Justice Kania. We have ordered stay of execution on certain terms which it is not material to state. The only question which arises now is as to the costs of this application. Two rival views have apparently prevailed at different times in the past in this Court. One view is that the grant of a stay of execution is an indulgence ; the decree at the moment is effective and the applicant is seeking to prevent the decree-holder from taking advantage of his rights, and on that view the applicant for the stay has been ordered to pay the costs in any event. That is the view which I think prevails in England and in Calcutta and was at one time adopted by this Court. The other view is that the decree may be reversed on appeal and if that happens, the execution of the decree was not, in the light of subsequent events, justified, and in that case the successful appellant ought not to have been ordered to pay the costs of the application for stay of execution. This latter view has prevailed more recently in this Court. It is desirable that the practice should be laid down one way or the other, and I think on the whole that the latter view is the better one, and that in the absence of

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special circumstances the general rule should be that the costs of an application for stay of execution should be costs in the appeal.

RANGNEKAR, J. :—I agree.

NANAVATI, J. :—I agree.

Attorneys for appellants : Messrs. *Aibara & Co.*

Attorneys for respondents : Messrs. *Ranchhoddas & Hakim.*

*Order accordingly.*

F. K. D.

## APPELLATE CIVIL.

*Before Sir John Beaumont, Chief Justice, and Mr. Justice Nanavati.*

BAPU VITHAL RAJPUT AND OTHERS (ORIGINAL PLAINTIFFS NOS. 1 TO 5),  
APPELLANTS v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND  
ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

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*Land Revenue Code (Bom. Act V of 1879), sections 73A and 79A—Grant of occupancy on restricted tenure—Sale by occupant of houses and trees without sanction of Collector—Forfeiture of occupancy.*

One S was the occupant of certain lands held on restricted tenure under section 73A of the Bombay Land Revenue Code before its amendment in 1913. On the said lands stood certain mango trees and three houses. In 1911 S sold the mango trees and the houses to the plaintiff without the previous sanction of the Collector. In 1921 defendant No. 2, the son of S, applied to the Collector to set aside the sale as being in breach of the provisions of the Bombay Land Revenue Code. The Collector set aside the sale under section 79A of the Bombay Land Revenue Code and ordered possession of the mango trees and houses to be given to defendant No. 2. The plaintiff appealed to the higher Revenue Authorities but the order of the Collector was confirmed. Plaintiff thereafter filed the present suit for a declaration of his title to the mango trees and houses and for possession.

*Held*, modifying the decree of the trial Court, (1) that the sale of mango trees was not in contravention of the provisions of section 73A of the Bombay Land Revenue Code as the trees were not by themselves land, and consequently their sale would not amount to transfer of occupancy within the meaning of that section ;

(2) that the sale of the houses with the land thereunder was in breach of the conditions in section 73A of the Bombay Land Revenue Code as it included the whole interest of the occupant in the land upon which the houses stood.

\*First Appeal No. 320 of 1926.